

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-CR-00257-RJC-DCK

USA

v.

ROBERT WILLIAM KENDRICK

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ORDER

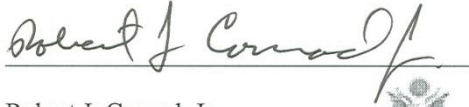
THIS MATTER is before the Court upon motion of the defendant for a modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2). (Doc. No. 60).

The defendant argues that his sentence for violating 18 U.S.C. § 924(c)(1) violates his due process rights because the government did not prove “active employment” of the firearm during the predicate drug trafficking crime, as compared to mere possession.¹ (*Id.* at 4, 7-9). He asserts his sentence would be “corrected properly” by using the gun-possession enhancement under USSG §2D1.1, rather than §2K2.4, which is applicable to § 924(c) offenses. (*Id.* at 25-26). The defendant’s reliance on Amendment 599, effective November 1, 2000, is misplaced because it does not retroactively alter his guideline range calculated in 2017. Thus, he is not entitled to relief under § 3582(c)(2). USSG §1B1.10.

¹ The Court recently denied the defendant’s Motion to Vacate under 28 U.S.C. § 2255, which raised the same issue. (Doc. No. 59: Order at 5).

IT IS, THEREFORE, ORDERED that the defendant's motion for a sentence modification, (Doc. No. 60), is **DENIED**.

Signed: August 10, 2022

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

